

SUBJECT: Authorizing magistrates to issue emergency protective orders

COMMITTEE: Criminal Jurisprudence - favorable, without amendment

VOTE: 8 ayes — Place, Talton, Farrar, Hudson, Nixon, Pickett, Pitts, Solis
0 nays
1 absent — Greenberg

SENATE VOTE: On final passage, February 8 — voice vote

WITNESSES: None

DIGEST: SB 129 would authorize magistrates to issue 30 day emergency protective orders, when defendants appear before them after arrest for offenses involving family violence or an offense under Section 42.07 (a)(7) of the Penal Code relating to continued instances of harassment (the so-called "anti-stalking" law).

An emergency protective order could be issued on a magistrate's own motion or at the request of the victim of the offense, the guardian of the victim, a peace officer or the attorney representing the state.

The magistrate in issuing the emergency protective order could prohibit the defendant from:

- committing acts of family violence or stalking;
- communicating directly with a member of the family or household in a threatening or harassing manner or communicating a threat through another person to a member of the family or household;
- going to or near the residence, place of employment or business of a member of the family or household; or
- going to or near the residence, child care facility or school where a child protected under the order resides or attends.

The magistrate would be required when issuing the emergency order to describe specifically the prohibited locations and the minimum distances that the party would be required to maintain, unless the magistrate determined otherwise.

An emergency protective order issued by a magistrate affecting a child would supersede any other order of the court that deals with possession or access of a child.

SB 129 would set out specific provisions to be included in the order for emergency protection issued by the magistrate, including a warning regarding penalties for violating the order.

The magistrate would be required to send a copy of the order to the chief of police or sheriff in the municipality or county where the victims to be protected by the order reside. If the emergency protective order prohibited a person from going near a child's school or child care facility, the magistrate would be required to send a copy of the order to that facility as well.

Each municipal police department and sheriff's department would be required to establish a procedure within their respective departments to provide adequate information and access to information for peace officers of the names of persons protected by an emergency order. SB 129 would authorize the police or sheriff's departments to enter an order for emergency protection in the department's or office's record of outstanding warrants as notice that the order had been issued and was in effect.

SB 129 would revise the Code of Criminal Procedure to incorporate the provisions of the bill, including that a person would commit an offense in violation of an emergency protective order if the person knowingly or intentionally stalked a victim. The bill would also provide that a "protected individual" as well as a member of the family or household is protected in a protective order.

SB 129 provides that an offense in violation of the provisions of the bill would be punishable as a Class A misdemeanor, punishable by a maximum one year in jail and a fine of \$4,000, unless it was shown that the defendant

has previously been convicted of domestic violence abuse two or more times, in which event the offense would be punishable as a state jail felony, punishable by confinement in a state jail for any term of not more than two years or less than 180 days, or, in addition to confinement, a fine not to exceed \$10,000.

This bill would take effect September 1, 1995.

**SUPPORTERS
SAY:**

SB 129 is a recommendation of the Senate Interim Committee on Domestic Violence. Texas makes no provision for victims of domestic violence to obtain a protective order on an emergency basis. In larger municipalities, victims can apply for and receive a protective order during normal business hours. In rural areas, victim may have to wait, unprotected, for days or weeks before a judge is available to grant an order. This makes little sense since victims need quick intervention by law enforcement and the courts to help ensure their safety. SB 129 will provide another important tool in the state's efforts to curb domestic violence abuse.

Currently, a person arrested for a domestic violence related offense may, as a condition of release, be made subject to an order prohibiting them from contacting the victim. The victim may not know the abuser has been made subject to such an order. In addition, peace officers cannot make an arrest for violations of these types of orders without first obtaining a bench warrant. SB 129 would allow peace officers to arrest persons who violate a magistrate's emergency protective order without first seeking a bench warrant, because the accused would have been present in open court when the order was issued. The bill would not affect ex parte orders, where the defendant is not present when the order is issued.

**OPPONENTS
SAY:**

No apparent opposition

NOTES:

Two related bills, both by Moncrief, are also on today's calendar. SB 126 would eliminate the requirement that at least one previous incident of harassing behavior must have been reported to a law enforcement agency for a harassment offense to occur. SB 127 would require that before a person who has been arrested for stalking is released on bail, the law

enforcement agency holding the person would be required to make a reasonable attempt to notify the alleged victim.